

Remarks

Reconsideration of the captioned application as amended herewith is respectfully requested.

The Office Action rejected claims 1 – 8 under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 6,114,298 to Petri, et al. ("Petri") in view of United States Patent No. 6,153,208 to McAtee, et al. ("McAtee"). Claims 1 - 8 are pending in the application after entry of this amendment.

Claim 1 was amended by adding the phrase "prior to the addition of the aqueous antibacterial solution to the substrate" in order to clarify the present invention. Support for this language may be found in the Specification as filed at, for example, page 7, lines 1 – 7 and page 8, lines 5 - 10, and as such, this amendment does not introduce new matter into the Specification.

The Rejection of Claims 1 – 8 Under 35 U.S.C. §103(a) based upon Petri in view of McAtee Has Been Overcome.

Claims 1-8 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Petri in view of McAtee. Applicants respectfully disagree in view of the ensuing discussion.

Petri is directed to a disinfecting microemulsion "comprising a surfactant, an aqueous phase comprising a bleach", and optionally a polymeric thickener. See Petri, column 2, lines 64 – 65 and col. 12, lines 60 – 64. Disposable towels or "wipes" may be "impregnated/wetted with [this] microemulsion. See Id., col. 16, lines 60 – 67.

Petri fails to disclose or suggest having a latex binder present in the substrate prior to the addition of an aqueous antibacterial solution thereto. As disclosed in the Specification, Applicants

have unexpectedly found that the stability of the antibacterial solution applied to the wipe product of the present invention, [i.e., "binder is first applied to the substrate... such that it penetrates greater than about 90%... of the substrate thickness [before] the antibacterial solution is applied to the coated substrate"], is greatly improved when the binder penetrates greater than about 90%... of the substrate thickness.

See Specification, page 8, lines 5 – 18 (emphasis added).

According to the Office Action, Petri is also "silent with respect to the specific fabric substrate, antibacterial agent and surfactant ingredient claimed in claims 3, 4, and 8;" therefore, one skilled in the art would have known to combine the antibacterial and surfactant characteristics of the cleansing article disclosed by McAtee with the wipes of Petri. Applicants respectfully disagree for the reasons that follow.

First, not only is Petri silent with respect to the specific antibacterial agent of claims 3, 4, and 8, but it is also silent with respect to "cationic antibacterial agents" in general as claimed in independent claims 1 and 7.

Second, McAtee is directed to an article that "is substantially free of water and generally feels dry to the touch." See McAtee, column 7, lines 63 to 65 (emphasis added). As acknowledged in the Office Action, the McAtee article may include a benzalkonium chloride cationic antibacterial agent, but it "is deficient in the fact, that the articles of the invention are not alcohol-free." Because of the substantial dryness of the McAtee articles, a user is also required to wet such articles with water prior to their use. See McAtee, column 3, lines 58 – 61.

Applicants respectfully submit that there is neither a disclosure nor a suggestion to combine Petri with McAtee. As set forth above, McAtee is directed to a substantially dry article for cleansing and conditioning, which must be combined with water upon its use. By contrast, Petri is directed to wet wipes wetted with a microemulsion." See Petri, column 16, lines 60 – 67 (emphasis added).

In order for a combination of references to be properly combined to render an invention obvious, it must be obvious to one skilled in the art that their teachings can be combined. See In re Avery, 518 F.2d 1228 (CCPA 1975). Thus, there must be some teaching, inference, or suggestion in either or both of the references that would have led one of ordinary skill in the art to combine the relevant teachings of the two references. See Ex parte Levengood, 28 USPQ.2d 1300 (BPAI 1993). The mere fact that it may be possible to combine two isolated disclosures does not render the result of such combination obvious absent a logical reason of record that justifies such a combination. In re Regel, 188 USPQ 136 (CCPA 1975).

Applicants respectfully submit that there is neither a disclosure nor a suggestion to combine the dry articles of McAtee with the wet wipes of Petri. Rather, the proposed combination would not have been obvious to one skilled in the art because the inventions are directed towards substantially different articles.

Moreover, Applicants further respectfully submit that the Office Action was extraordinarily selective in combining elements from the McAtee substantially dry, alcohol-containing cleansing and conditioning article (which, unlike the presently claimed invention, requires user wetting), and the wet wipes of Petri (which, unlike the presently claimed invention, fails to have: 1) a latex binder present in the substrate prior to the addition of an antibacterial solution thereto, and 2) a cationic antibacterial agent).

As set forth in the case law, citation to references which merely indicate that isolated elements and/or features recited in the claims are known is not a sufficient basis for concluding that the combination of claimed elements would have been obvious. See Ex parte Hiyamizu 28 PQ2d 1300 (BPAI 1993). Such a selective combination of elements can only result from hindsight after the claimed invention was made, which is not the proper vantage point in time for deciding obviousness. See In re Carroll 202 USPQ 571 (CCPA 1979).

Therefore, because 1) there is neither a disclosure nor a suggestion to combine Petri with McAtee; and 2) the Office Action's proposed combination resulted from improper, selective hindsight based upon Applicants' invention, Applicants respectfully


submit that the rejection of claim 1 and claim 7 under 35 USC §103 has been overcome and should be withdrawn.

In view of the above, Applicants further respectfully submit that the rejection under 35 USC § 103 of claims 2 through 6, which depend upon independent claim 1 and contain all of its limitations therein, as well as the rejection of claim 8, which depends upon independent claim 7 and contains all of its limitations therein, also have been overcome and should be withdrawn for the reasons set forth above.

Conclusion

Applicants believe that the foregoing presents a full and complete response to the outstanding Office Action. An early and favorable response to this Amendment is earnestly solicited.

Respectfully submitted,



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21 May 2003

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